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THE JEWS AND THE ENGLISH LAW.

V.

MENASSEH BEN ISRAEL'S mission had failed. The Conference summoned to consider his proposals had broken up without coming to any resolution; the petition presented in the following spring had received no answer, and at length, after waiting two years, the great Rabbi had returned to his home and friends, giving up the cause for lost. But the publicity given to the mission and the hopes founded upon it were such that many undoubtedly believed that it had met with some measure of success. There are accordingly some few references in contemporary literature to favours conferred upon the Jews by Cromwell. It is probable that all of these refer to the Conference at Whitehall in December, 1655, and there is little doubt that, owing to the attitude that Cromwell had adopted towards Menasseh both before and at the Conference, the impression had got abroad that special privileges had been formally accorded to the Jews. It was to officially contradict this widespread impression that the narrative set out at full length in the last article was published by order of Cromwell and his Council. It would serve no useful purpose to enumerate or comment on all the statements made by the writers of the period, but it will be sufficient to mention the most explicit of them all. John Evelyn writes in his *Memoirs*, December 14, 1655, "Now were the Jews admitted¹." This must allude to the Conference, for if we turn to the official narrative we find that this was

¹ Evelyn's *Memoirs*, vol. I, p. 288 (1st edition).

the day of the penultimate meeting of the Conference, but we also find that the diarist's statement is untrue, and that no resolution on this or any other point raised at the Conference was ever reached. Nor can there be any reason for casting doubt upon the statement in the official narrative, for it is amply corroborated by Menasseh himself in his *Vindiciae Iudaeorum*¹. In fact the negotiations of 1655 to 1656 had resulted in precisely the same way as those of seven years earlier, and the statements made in regard to them are entitled to no more weight than those which have already been referred to in dealing with the earlier period. It is, moreover, somewhat remarkable that the learned Dr. Haggard² omits all mention of Menasseh and the Conference in his concise but accurate account of this subject. He does, however, allude to the petition of 1648, and it may well be that he regarded Menasseh's mission and the earlier petition as really being only one continuous effort spread over a lengthy period; if such was his view it seems to have been shared by Menasseh himself, who, writing on April 10, 1656, says: "For seven yeares on this behalf, I have endeavoured, and solicited it" (namely an entrance into this Island for the Jews), "by letters, and other means, without any intervall³." In any case it would at the present time be almost universally admitted that Dr. Haggard's words, "The question was much agitated, but nothing was done," apply with equal truth to the earlier petition and the great Rabbi's mission seven years later.

During our own and our fathers' times a great change has taken place in the opinions men have formed of Cromwell's character and his place in the history of his country. It was at one time the fashion to write him down a self-seeking hypocrite; but thanks to the powerful advocacy of Thomas Carlyle and other writers contemporary with and subsequent to Carlyle, he has become a great

¹ See the seventh section.

² *Cons. Cas.*, vol. I, p. 216.

³ *Vindiciae Iudaeorum*, sec. 7.

statesman, nay, a hero. In 1841, when this change of view was still in the process of birth, Carlyle wrote of Cromwell: "His dead body was hung in chains; his 'place in History'—place in History, forsooth—has been a place of ignominy, accusation, blackness and disgrace; and here this day who knows if it is not rash in me to be among the first that ever ventured to pronounce him not a knave and liar, but a genuinely honest man¹?" And so in the course of the apotheosis of the great Oliver, his virtue as an upholder of Religious Toleration has been much dilated upon; and his conduct towards the Jews has been selected as one instance of it. But it should not be forgotten that by the men of his own time Toleration, in those who held the reins of government, was regarded as a vice rather than a virtue; and accordingly it was not his supporters, but his political opponents, such as Walker, Evelyn, and Burnet, who laid most stress on the favours he was alleged to have shown to the Jews. Before he had risen to supreme power, he had been a staunch upholder of liberty of conscience, but once he had become head of the state he was too wise to attempt to carry out measures which he knew would create violent opposition among those on whose support his influence depended. As he himself said: "This hath been one of the vanities of our contest. Every sect saith, 'Oh give me liberty!' but give it him, and to his power he will not yield it to anybody else²." Accordingly, when the time for its actual application came, Cromwell was constrained to allow liberty of conscience only within the very narrowest limits; for instance, in dealing with the Irish Catholics he did not force them to attend Protestant churches, but he refused to allow them to hold public worship according to their own rites. "I meddle not with any man's conscience," he wrote to the Governor of Ross; "but if by liberty of conscience you mean a liberty to exercise the mass, I judge it best to exercise plain dealing

¹ Carlyle, on Heroes, p. 335.

² *Oliver Cromwell*, by Charles Firth, p. 306.

and to let you know, where the Parliament of England have power that will not be allowed of¹." As head of the executive he might forbear to rigidly enforce the laws making attendance at church compulsory, but there is no reliable evidence that he at any time allowed forms of worship contrary to the Protestant religion, and therefore, in breach of the law of the land, to be publicly celebrated.

Our English historians have taken Cromwell's hospitable treatment of Menasseh and his summoning of the Whitehall Conference as examples of his Toleration, but all admit that in this instance no practical effect was given to it. Some few writers assert that, though the Conference was a failure, the Protector subsequently formally gave the Jews a legal right of settlement in the country, and permitted them to establish a synagogue here. A statement to this effect was made by Godwin², and of recent years much has been written by Jewish writers, and especially by Mr. Lucien Wolf, attempting to prove this statement. Some of the last-mentioned writer's theories are so widely known and have been so skilfully put forward as to call for some comment here. The first of these theories is to the effect that a "tolerance" in the shape of a "public assurance of protection" was granted to the Jews by Cromwell on February 4, 1658. The authority for this is a passage in Burton's *Diary*, under the above-mentioned date, which reads as follows: "The Jews, those able and general intelligencers, whose intercourse with the Continent Cromwell had before turned to a profitable account, he now conciliated by a seasonable benefaction to their principal agent resident in England³." The authorship of Burton's *Diary* is very doubtful, nor is the work, especially those parts of it which are not reports of speeches supposed to have been taken down in the House

¹ *Oliver Cromwell*, by Charles Firth, p. 267.

² *History of the Commonwealth*, vol. IV, c. xvii, p. 250.

³ *Burton's Diary*, vol. II, p. 471.

of Commons, of any great authority. Moreover, to the ordinary reader it seems hardly possible that the words used can be brought to bear the interpretation which is thus sought to be placed upon them. They point only to some personal favour, such as a trade licence or money grant, conferred on an individual; not to a public declaration in favour of a religious body—a matter which would have been considered of great political and constitutional importance, and which would not have been described in language of this kind. Mr. Wolf, however, says of it: “The precise terms of this grant, which was doubtless oral, have not been preserved. But as it was preceded by the endenization of Carvajal, in defiance of the recommendation of the Council that the Jews should only be permitted the standing of ordinary aliens, and as it was succeeded by the public celebration of the Feast of Tabernacles, we may assume that it was a kind of informal *fays ce que voudras*, the Protector relying on the tried discretion of the Jews¹.” This passage contains two mistakes; in the first place, if the Council even did make a recommendation, about which more will be said hereafter, Carvajal’s endenization was not in defiance of it, because the letters patent were granted to Carvajal on August 17, 1655²: whereas the petition of Menasseh Ben Israel, in answer to which the alleged recommendation of the Council is supposed to have been made, was not presented until October in that year. In the second place, this event, whatever its nature, was not succeeded by the public celebration of the Feast of Tabernacles. The authority for this statement is a passage in a letter by Mr. Jo. Greenhalgh, dated April 22, 1662, in which he says, after describing a visit to the Jewish Synagogue, that he had been told that “one year in Oliver’s time they did build booths on the other side of Thames, and kept the Feast of Tabernacles in them.” Even if such evidence is accepted implicitly, the celebration

¹ *The Resettlement of the Jews in England*, by Lucien Wolf, p. 12.

² *Transactions of the Jewish Historical Society*, vol. II, p. 46.

mentioned could not have taken place after February 4, 1658, for Cromwell died on September 3 following—a considerable time before the date for celebrating the Feast of Tabernacles had come round¹. Mr. Wolf further supports his theory by a reference to Thomas Violet's Petition against the Jews presented to the King and Houses of Parliament in December, 1660. On turning to the document cited we find that the writer is speaking of Menasseh's Petition and the Whitehall Conference; his words are: "Upon several days hearing, Cromwel and his Council did give a Toleration and Dispensation to a great number of Jewes to come and live here in London," &c.² The statement, whether we regard it as true or untrue, is seen at once on perusing the context beyond all question to refer to the events of December, 1655, and can have no bearing whatsoever upon an alleged grant of Toleration in February, 1658, more than two years afterwards.

The theory itself rests upon no sufficient evidence, and the statements which are put forward as corroborating it are either wholly irrelevant or absolutely inconsistent with it; the excuse for dealing with it at such length must be that for a number of years a learned society claiming an important place in the Jewish community has held a public dinner in the early days of February to celebrate what it has been pleased to call "Resettlement Day." The dinner was announced in 1900, but not held, owing to the death of Queen Victoria; it was not revived during the present year, possibly because the organizers have discovered the futility of attempting to create an anniversary for which there is no historical justification.

The next theory is, that though the Conference effected

¹ If this celebration ever took place, it would probably be in the autumn of 1655, when the question of readmission had not yet been discussed by the Whitehall Conference and was therefore still *sub judice*. If it was before Menasseh had completed his journey to London, the building of the booths on the other side of Thames would be explained.

² Violet's Petition against the Jews, p. 2.

nothing, the Committee of the Council of State which had been appointed to consider Menasseh's Petition, subsequently reported in favour of admitting the Jews, subject to certain limitations and restrictions. There is no sufficient evidence that such a report was ever made. It is certain that there was no formal report, for there is no notice of one in the Council Order Book. There is, however, an unsigned paper in the state archives, which Dr. Gardiner regards as a resolution agreed on by the Committee but never presented to the Council, but which Mr. Neal calls a report of the answers *pro* and *con*, given in the Council when the question was debated. From a careful perusal of the document, the latter seems to me the better view, and it is here subjoined as read in that light, the words in brackets not being in the original. [Proposal] "That the Jews deserveinge it may be admitted into this nation to trade and trafficke and dwel amongst us as providence shall give occasion."

[The answer of those that were against it, was, that they could not think it lawful, for the reasons marked with Arabic numerals. Those who were of a contrary opinion said] "That as to poynt of conscience we judge lawfull for the magistrate to admit in case such materiall and weighty considerations as hereafter follow be provided for, about which till we are satisfyed we cannot but in conscience suspend our resolution in this case.

"1. That the motives and grounds upon which Menasseh Ben Israel in behalfe of the rest of his Nation in his booke lately printed in this English tongue desireth their admission in this commonwealth are such as we conceive to be very sinfull for this or any Christian state to receave them upon.

"2. That the danger of seducinge the people of this nation by their admission in matters of religion is very great.

"3. That their havinge of synagogues or any publicke meetings for the exercise of their worship or religion is

not only evill in itselfe, but likewise very scandalous to other Christian churches.

“4. That their customes and practises concerning marriage and divorce are unlawfull and will be of very evill example amongst us.

“5. That principles of not makinge concience of oathes made and injuries done to Christians in life, chastity, goods or good name have bin very notoriously charged upon them by valuable testimony.

“6. That great prejudice is like to arise to the natives of this commonwealth in matter of trade, which besides other dangers here mentioned we find very commonly suggested by the inhabitants of the city of London.

“7. We humbly represent [that they should not be admitted for the above reasons: others represented that they might be admitted subject to the following limitations]

“I. That they be not admitted to have any publicke Judicatoryes, whether civill or ecclesiasticall, which were to grant them terms beyond the condition of strangers.

“II. That they be not admitted eyther to speake or doe anythinge to the defamation or dishonour of the name of our Lord Jesus Christ or of the Christian religion.

“III. That they be not permitted to doe any worke or anythinge to the prophanation of the Lord's Day or Christian Sabbath.

“IV. That they be not admitted to have Christians to dwell with them as their servants.

“V. That they bear no publicke office nor trust in this commonwealth.

“VI. That they be not allowed to print anything which in the least opposeth the Christian religion in our language.

“VII. That so farre as may be they be not suffered to discourage any of their owne from usinge or applyinge themselves to any which may tend to convince them of their error and turn them to Christianity. And that some

severe penalty be imposed upon them who shall apostatize from Christianity to Iudaisme¹."

Except as showing the ideas current at the time, the document is of little importance; this cannot be doubted if it is a mere report of the arguments used in the Council or Committee, and even if it is a report, intended to be presented to the Council but never in fact placed before that body, it would not be entitled to any great weight as a constitutional document. Nor would its weight be materially increased if, as there is no reason to believe, it had actually been adopted by the Council of State because the recommendation in favour of the Jews was conditional upon certain matters being first provided for and no such provision was ever during the whole existence of the Commonwealth Government made or attempted to be made either by the legislature or the executive²."

Let us now turn to a third theory. It is that, though it cannot be proved that any formal concession was publicly made to the Jews, yet the circumstances accompanying the proceedings taken against one Antonio Robles show that the demands made by the Jews had by some secret arrangement been practically granted. To test this theory the proceedings known as the Robles case must be briefly examined. In the spring of 1656 England was at war with Spain, and in accordance with the custom of those times a proclamation had been issued for the seizure of the property of all subjects of the king of Spain that could be found either on the high seas or in the territory of the Commonwealth. In virtue of this proclamation

¹ *State Papers*, Interregnum, ci, No. 118; *Calendar*, do.; *Domestic*, p. 15; Neal's *History of the Puritans*, vol. IV, pp. 141, 142 (ed. of 1738). Gardiner's *History of the Commonwealth*, vol. III, p. 219 n.; Wolf's *Resettlement*, p. 16; and *Menasseh Ben Israel*, pp. xlv, liv, lv.

² If the document itself is looked at, its precise date is of little importance. Mrs. Everett Green, in the *Calendar of State Papers*, places it about November 13, 1655, and Mr. Wolf's note on p. lv of his *Menasseh Ben Israel* seems not to be justified, especially as he himself gives its date as November 13 in his *Resettlement of the Jews*, p. 11.

an information was laid on March 14, 165 $\frac{1}{2}$, against Don Antonio Rodrigues Robles, a Spaniard, living in Duke's Place, on the ground that he had lately received a large cargo of wine from the Canaries, and had laden a second ship with woollen goods which he was about to dispatch thither. An order was accordingly made for the arrest and seizure of the said ships and a search of Robles's house, goods and papers. The order was at once executed, and thereupon Robles addressed a petition to the Protector. He stated that he was a Portuguese born and of the Hebrew nation, and hoped that he might partake of the laws and privileges granted to all merchant strangers the rather that he had resided here many years and paid many thousand pounds for customs, and in all things submitted to the laws of this nation. If any accusation were brought against him he asked to be permitted to answer it legally, and prayed that his goods and papers might be restored to him upon sufficient bail being given to answer the charges made against him. The petition was referred to the consideration of the Council, at whose orders a formal inquiry was held and evidence taken by the Commissioners for the Admiralty and Navy.

According to Robles's own account, which was corroborated by the evidence of several of the principal foreign merchants living in London, he was born in the kingdom of Portugal in a town called Fundao, and his family by reason of being Jews had been forced to fly from Portugal to Spain, where they were persecuted by the Inquisition, and some were tortured to death, some burnt, and others sent to the galleys, but Robles himself by God's great mercy fled to the Canary Islands, and by the help of a kinsman, who was treasurer under the king of Spain, acquired some estate, which he could not long enjoy; for, having been advised that orders had been sent by the Inquisition to apprehend him as a Jew, he came to England, where he remained some years; but he afterwards went back to the Canaries, where he recovered a portion of his

property and returned with it to England, where he had lived for the last four years. He confessed that he had attended mass at the Spanish Ambassador's house in London, and that he was not circumcised. Not only was this evidence supported by Robles's friends, but it was hardly impugned by those who had given information against him—namely, John Baptista de Dunnington, a merchant and factor, and Francis Knevett, a clerk and notary of Doctors Commons. The former at his examination said that he had served Robles for eight years, having left his family six months before. That Robles was reputed by some a Portugal, by some a Spaniard; that his wife came out of Portugal, and spoke a little Spanish. That he heard he was lately turned a Jew, having formerly professed himself a Catholic. When he first came to live with Robles he took him to be a Spaniard. That Robles changed his name when he went to the Canaries (from Fererino to Robles), where the deponent had lived with him about a year. That the treasurer there was cousin to Robles, called Duarto an Rigij (Henriques), who rented the office under the king of Spain, and was then in England, being with his family turned Jews. On further examination, being asked specifically whether Robles was a Spaniard, he said: "I answer that I cannot positively say whether he be or not, for I have heard several reports of him; some saying he was a Spaniard and others saying he was a Portugal; but which to believe, I cannot tell. But I did always take him to be a Spaniard."

Knevett, who had apparently been very bitter against Robles as being a Jew dog, and had desired Dunnington to swear against him, did not, when himself examined, give very damaging evidence. He said that he believed Robles "to be a Jew, not a Spaniard; though living in the Canaries he lived as a subject of the king of Spain. That he is a kinsman to one Duarto en Rigis (Henriques) who was treasurer in the Canaries, but is now in England, and lately told the deponent that the king of Spain had seized

his estate in his Dominions on the account of his being a Jew."

In this state of the evidence the Commissioners reported to the Council on May 14, that they did not find any convincing evidence to clear up either the nation or religion of the petitioner. Some affirming him to be a Jew born at "ffundam" in Portugal, which they tender to testify upon oath; others who have known him long, that they always esteemed him a Spaniard, though their testimony seem not so positive as the other; but all agree that "both in the Canaries, where he was employed under one of the farmers of the king's revenue, and in England he hath professed himself a Romanist, having frequented the mass till about six months since, which with the consideration that he is yet uncircumcised induceth us to conceive he is either no Jew or one that walks under loose principles very different from others of that profession." However, upon the whole they were unable to return any satisfying opinion upon the business, but humbly submitted the same to the Council's determination.

After hearing the report read, the Council, as might have been foreseen, on May 16 ordered that the seizures should be forthwith discharged, and that Robles should be at liberty to dispose of his goods and papers notwithstanding the warrants issued against them¹.

The case is undoubtedly of great interest as showing the position of the Jews here at the time of the failure of Menasseh's mission, but it in no way points to any legal recognition having been accorded to them. Robles's property was only liable to seizure and confiscation if he was a subject of the king of Spain. As soon as the informa-

¹ *State Papers, Domestic, Interregnum*, vol. CXXV, 38. i. 76, p. 604. i. 112, p. 289. Do. CXXVI, Council, Day's Proceedings, No. 18. Do. i. 77, p. 38. Do. CXXVI, 66, Nos. 11, 12, 13, 67, 67 i, 67 ii. Do. 105, 105 i-xi. i. 77, pp. 44, 78. Do. CXXVII, 21. Do. Council, Day's Proceedings, Nos. 19, 40. The most important of these documents are printed at length in Mr. Wolf's valuable Appendix to his *Crypto-Jews under the Commonwealth*, *Transactions Jewish Historical Society*, vol. I, p. 77 seq.

tion was laid against him he was ready with his answer, "I am no Spaniard, but was born in Portugal, and am of Jewish parentage." The main difficulty was to explain how it was that he traded with and had property in the Canaries, and had lived there for some time. This question was put to the witnesses examined by the Commissioners, and answered in the words of one of them, that "the Portugals who took part with the king of Spain were free to live in his territories." The plea of Judaism seems to have been set up to show why the defendant had left Portugal and afterwards the Canaries. Whether successful or not, it could entail no injury here; for, as has been already shown, the mere fact of being of Jewish birth or religion was no crime provided that the laws against Recusants were complied with, and no part was taken in a religious service which contradicted or impugned the accepted doctrines of Christianity. In any case this plea the Commissioners, who were the judges of the fact, found not proven, conceiving the defendant either to be no Jew, or very different from others of that profession: so that if he had relied on that plea alone he must have failed. He was successful because it had not been satisfactorily proved that he was a Spaniard, and the Council rightly acted upon the ancient maxim of the English law, that the burden of proof is upon those who desire to exact a forfeiture. We thus see that, months after the holding of the Whitehall Conference, the position of the Jews remained exactly the same as it had been in the time of Charles I. We see from the evidence that Robles had been settled here before the Commonwealth had been established, and some of the Crypto-Jews had been settled here even longer. Moreover no change took place in the condition of the Jews until after the Restoration. Robles, it was proved by Dunnington, "always kept his moneys at a goldsmith's, whose name is Mr. Backwell, who received it and paid it out according to his order"; and the Jews of the Restoration still kept their banking accounts at Mr. Alderman Back-

well's¹. He is also found residing in the same house in Duke's Place in the year of King Charles's return². He could not continue to attend mass at the Spanish Ambassador's, for such services would not be held after the outbreak of the Spanish War; but he and his friends if they did not belong to the six Jewish families to which Cromwell is said to have³ given special privileges, would probably occasionally attend at some Protestant place of worship in order to make sure of escaping the pains and penalties of the Acts against Recusants⁴.

Yet another theory claims attention; it is that Cromwell as Protector gave to John Sadler "a special authorization" to build a synagogue⁵. The authority for this statement is a passage in the account of John Sadler in the Birch Manuscripts. The account is an ordinary biographical notice, with the facts apparently stated in chronological order, which was furnished to the writer as late as the year 1738 by Sadler's grandson, Thomas Sadler, who was not alive at the time, and could have no knowledge of the facts except by hearsay. The words are "By his interest it was that the Jews obtained the Privilege to build for themselves a Synagogue in London." The words immediately preceding are "He was in high favour with Oliver Cromwell, who by his letter from Cork invited him to take upon him the office of Chief Justice of Mounster, in Ireland, with a salary of one thousand pounds per annum, which he excused himself from accepting." The letter from Cork,

¹ Wolf's *Jewry of the Restoration*, p. 11.

² See the Mendez da Costa lists now printed in Wolf's *Jewry of the Restoration*, p. 4. Mr. Wolf is evidently right in fixing the date of these as 1660, but his theory that they were the work of reformers attempting to procure the re-expulsion of the Jews does not seem very probable. The traditional view that they are lists of persons made out preparatory to the regular organization of a community seems better.

³ The Question whether a Jew, &c., p. 36; and see the Petition of the Jews to the House of Commons against the special tax proposed to be laid upon them in 1689.

⁴ See the Ordinance of September 27, 1650, already quoted.

⁵ Wolf's *Jewry of the Restoration*, p. 6; and his *Menasseh*, p. lviii.

which appears on another folio, was dated December 1, 1649. The words immediately following are "August 31, 1650, he was constituted Master of Magdalen College in Cambridge¹." The writer is ostensibly alluding to a grant made at the end of 1649 or at the beginning of 1650, but we know from the facts, which are now so well established as to be incontrovertible, that no such grant could then have been made. But, it may be said, there is no need to take the words in connexion with their context, and we may assume that they indicate a privilege granted not in 1650, but in 1656. This is a somewhat large assumption to make upon the authority of a writer who had been supplied with information more than eighty years after the event by one who could not have been personally cognizant of the facts; nor is it much less at variance with the known sequence of events and possibilities of the case. It is admitted that the privilege was never made use of by the Jews; no document conferring it has ever been discovered; by the constitution then existing, which Cromwell was not in the habit of disregarding except for the purpose of securing some great political advantage, the Protector had no power to make such a grant, and finally, if it had ever been made, it is unaccountable that John Sadler himself in his petition on behalf of Menasseh Ben Israel's widow, addressed to Richard Cromwell, who had succeeded his father as Lord Protector, though he speaks of his own efforts on behalf of the Jews, omits altogether to mention it². It seems impos-

¹ Birch MSS. 4,223, fo. 165, 166.

² "To his Highness the Lord Protector the humble Petition of John Sadler Sheweth that although your petitioner being often pressed to present petitions in behalf of the Jewes, did rather dissuade their coming hither, yet by some letters of your late royall father and others of note in this nation some of their synagogs were encouraged to send hither one of their chief rabbines, Menasseh Ben Israel, for admittance & some freedome of trade in some of these ilands. And when he had stayed here so long that he was allmost ashamed to return to those that sent him or to exact their maintenance here where they found so little success after so many hopes, it pleased his Highness & the Council to settle on the said Menasseh a pension of £100 a year," &c. (*S. P. Dom. Interregnum*,

sible to come to any other conclusion than that the alleged grant was never made.

The last of these theories with which it is necessary to deal is that a favourable answer was given to the petition mentioned at the end of the last article, which was presented on March 24, 1656, praying for protection in writing for meeting privately for purposes of worship, and for leave to establish a cemetery for the burial of the dead. It is certain that no document purporting to confer these rights has ever been discovered, but it is suggested that such a document may have been given to the petitioners and subsequently lost or destroyed by them. The motive for destroying it is not very apparent, but it is said that the Jews, after the Restoration, were afraid to acknowledge the receipt of any benefit from the late Usurper; if this were so, they showed a great lack of that far-sighted shrewdness which has usually characterized their actions. To have possession of a grant from Oliver was no crime after his régime had come to an end, and it is remarkable that after the Revolution, when their rights and privileges were under discussion, no such grant was ever referred to, although at that time there would be no more prejudice against those who had received benefits from Cromwell than against those whose religious privileges depended upon the favour of the kings of the exiled house¹. Moreover the fact of wilful destruction or voluntary loss would not explain the total disappearance of all traces of the document, if it had ever existed; for, besides the formal answer given to the petitioners, a copy of a document of this kind would have been taken and kept among the public records along with the petition which is still preserved there. No copy is to be found there, and there is no reason to differ from Dr. Gardiner's statement of the result of the reference of this petition to the Council—"As

ch. viii). The whole petition is printed in Wolf's *Menasseh Ben Israel*, p. lxxxvii.

¹ See the case of the Jews stated, 1689.

might have been expected, it met with no response. Even if that body had been more favourably disposed towards the Jews than was the case, it was hardly likely to commit itself by a formal order to the effect that the existing law should not be carried into effect ¹." There is, however, strong evidence, amounting almost to positive proof, that a Jewish cemetery was established about this time at Mile End. There is still in the possession of the congregation of Spanish and Portuguese Jews in London the counterpart of a lease dated April 13, 1670, of land at Mile End, which has undoubtedly been used as a cemetery since that time. It recites the surrender of a lease "for fourteen years of the same land granted in February, 165⁸, by John Tuffenell and another to Anthony Fernandez Carvayall and Simon de Caceres." As the lease was surrendered it would in the ordinary course be given up to the grantors and cancelled or destroyed by them, so that there is little hope of finding it now ². The lease of 1670 certainly does not, and that of 1656 probably did not mention the purpose for which the land was granted; nor is it likely that any separate deed of trust was drawn up, for such a deed would have been valueless, inasmuch as a trust of this nature would not have been enforceable at this time or for long afterwards. Of the joint lessees Carvajal had received letters of denization; De Caceres was still an alien, and consequently incapable of holding any estate in land other than a lease of premises for the residence of himself or his servants, or the purpose of any business, trade, or manufacture carried on by him ³. On the death of Carvajal, in

¹ Gardiner's *History of the Commonwealth*, vol. III, p. 222.

² Mr. Godwin, writing in the year 1828, says: "I applied to the Rulers of the Spanish and Portuguese Synagogue in Bevis Marks, and by their permission Mr. Almosnino, their secretary, obligingly went over with me some of their oldest records. Among them I found an account of a lease of a piece of ground in the parish of Stepney, granted them in February 165⁸, for a burying-ground." It is probable that he is referring to the lease of 1670, which mentions an older lease granted in 1656 (*History of the Commonwealth*, vol. IV, p. 250).

³ "But as to a lease for yeares, there is a diversitie between a lease for

November, 1659, the lease would vest by right of survivorship in De Caceres alone, so that if the land had been openly used as a cemetery, or for any other purpose than that of trade or habitation, it could, and it may be safely asserted would, have been claimed by the Commonwealth or, after the Restoration, by the Crown, nor could the claim have been successfully resisted.

The old book of records of interments in the possession of the Spanish and Portuguese Congregation in Bevis Marks shows that four burials took place between the years 1657 and 1660, but these interments must have been conducted with great privacy and, if they were accompanied by any religious ceremony, with the strictest secrecy. At this period, except in the case of Recusants, there was no law prohibiting the burial of the dead in a private garden¹; but such an interment, if attended by ceremonies unknown to and inconsistent with the doctrines of Christianity, would have immediately provoked a criminal prosecution. There being no record of any such prosecution, it may safely be affirmed

yeares of a house for the habitation of a merchant stranger being an alien, whose king is in league with ours, and a lease for yeares of lands, meadows, pastures, woods and the like. For if he take a lease for yeares of lands, meadows, &c., upon office found, the king shall have it. But of a house for habitation he may take a lease for years as incident to commerce; for without habitation he cannot merchandize or trade. But if he depart, or relinquish the realme, the king shall have the lease. So it is if he die possessed thereof, neither his executors nor administrators shall have it, but the king; for he had it only for habitation as necessary to his trade or traffique, and not for the benefit of his executor or administrator" (*Co. Litt.* 26). No amendment of the law was made until 1844, when the right of holding lands was extended to all aliens, whether merchants or not, but it was still limited to lands held for the purpose of residence or occupation by the alien or his servants, or for the purpose of any business, trade, or manufacture, and to terms not exceeding twenty-one years (6 & 7 Vict., cap. 66, sec. 5). It was not until 1870 that the unrestricted right of holding lands was conferred upon aliens (see 33 Vict., cap. 14, sec. 2). As to the old law, see the case of *Fish v. Klein* (1817), 2 Mer. 431.

¹ For the law relating to the disposition of dead bodies, see the judgments of Lord Stowell in *Gilbert v. Buzzard* and *Boyer* (1821), 2 Hag. Cons. 333; and Stephen (J.) in *The Queen v. Price* (1884), 12 Q. B. D. 247.

that if the Jewish burial service was performed at all its performance was successfully concealed. It is also manifest that this mode of interment did not satisfy the religious scruples of the more observant Jews. In September, 1657, Menasseh Ben Israel's son died in his house in London, and the pious father determined, notwithstanding the greatness of the expense and the narrowness of his means, to transport the body to Holland. To enable him to do this he petitioned the Protector to commute the pension of £100 which had recently been granted him for an immediate payment of £300: the petition was not granted in full, for it was finally arranged that the pension should be resigned and a new grant of £200 be made. Menasseh was ultimately enabled to make the journey without receiving the grant¹, but the transaction shows that the right of burial with Jewish religious ceremonies had not

¹ *S. P. Dom.* Intro. cxlvi. 89, and cc. 8, printed in Wolf's *Menasseh Ben Israel* at p. lxxxvii. Mr. Wolf does not do Cromwell justice in regard to the payment of this pension. He says: "Unfortunately this pension was never paid, and Menasseh became overwhelmed with cares" (*Menasseh Ben Israel*, p. lxix). The pension was granted on March 23, 1657, and enrolled on May 21, 1657: "Manaseth Ben Israel, a penſion of 100^l per annum, payable quarterly and commencing from the 20th day of February, 1656[-7]" (see the Fifth Report of the Deputy Keeper of Public Records, App. II, p. 263). Before Menasseh's departure, in the autumn of 1657, only two quarterly payments of £25 each would be due, and there is ample evidence that two such payments were made, one before September 29, 1657, and one after that date. It was probably this last payment which enabled Menasseh to make his way to Middelburg. It was not suggested by Menasseh's friends that the pension was not paid; what Sadler says in his petition to Richard Cromwell is "that at length he submitted to resign his former pension for a new grant of £200 to be presently paid as the councill ordered. But notwithstanding his stay & expense in procuring several seales, he never gott one penny of the said £200." It may be that Sadler was misinformed about the seals being actually procured, at any rate they are not extant now; and if they were ever granted the financial advisers of the Protector may have thought that as Menasseh died almost directly after the commutation of the pension, and before another quarter's allowance had fallen due, there was no moral obligation to pay his widow the promised grant of £200. For the two payments of £25 each, see the Eighth Report of the Hist. MSS. Comm., Part I, App. pp. 94b and 95a.

been granted, and that the establishment of a Jewish cemetery was unknown to the authorities. Otherwise the answer to Menasseh's petition would have been, You can bury your son here, and there is, therefore, no occasion to commute your pension: this would seem to dispose of the theory that a favourable answer was given to Menasseh's petition of March, 1656. As we have already stated, the petition was a very modest one; it did not ask for the right of public worship or the formation of a synagogue, but merely permission to meet privately for the purposes of devotion at the petitioners' own houses; nor, on the other hand, did it ask for the establishment or consecration of a cemetery, but merely for a licence to bury the dead in a convenient place outside the city "with the Proprietor's leave." The Jews in England were at this time classed with Popish Recusants, and therefore such a licence was necessary, for the Act to prevent and avoid dangers which may grow by Popish Recusants (3 Jas. I, c. 5, s. 15) imposed a penalty of twenty pounds upon persons causing a Popish Recusant to be buried in any place other than in the church or churchyard, according to the ecclesiastical laws of the realm. The request was merely to exercise a right which, had it not been for the statute, could not have been denied. However, since the outbreak of the war with Spain and the decision of the Robles case, the Jews here no longer lived as Spanish subjects in close touch with the Embassy and regularly attending the mass held there; accordingly they may have been no longer considered as Popish Recusants, and so liable to the penalties of the statute. As stated above, they probably at this time attended some Protestant place of worship. And so if they buried their dead in private ground without any religious ceremony they did nothing illegal, and if Jewish religious rites were performed, the strictest secrecy was observed. When all the circumstances are taken into consideration, it can hardly be maintained that the fact that a few Jews were buried in a garden at Mile End without

any publicity, and probably without any previous consecration of the ground, is any proof that any legal protection had been accorded to those professing the Jewish religion ¹.

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¹ For the facts concerning the first Jewish cemetery at Mile End, see an article by Mr. Israel Davis in the *Jewish Chronicle* of November 26, 1880. Some interesting letters on the subject appeared in the same periodical during the month of October, 1901.

(To be continued.)